

19-712 OTHER LEAVE PROGRAMS

SCOPE AND PURPOSE

This Regulation governs the leave programs, other than annual and sick leave and holidays.

19-712.01 OTHER LEAVE TYPES

Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

A. Administrative Leave

State employees in full-time equivalent (FTE) positions who are physically attacked while in the performance of official duties and suffer bodily harm as a result of the attack must be placed on administrative leave with pay by their employers rather than sick leave. The period of administrative leave for each incident may not exceed 180 calendar days. Denial of the use of administrative leave by the agency will be grounds for review by the Office of Human Resources (OHR) upon request of the employee. Administrative review by OHR will be ~~final~~.

B. Adoption Leave – *(Refer to Section 19-710.04 B. 7.)*

C. American Red Cross Certified Disaster Service Leave

An employee who is a certified disaster service volunteer for the American Red Cross may use up to 10 days of paid leave in a calendar year to participate in specialized disaster relief services with the approval of the agency designee.

D. Blood Drive and Donation Leave

1. Agencies may periodically arrange volunteer blood drives for their employees. The blood drives may be held at the times and places as may be determined by the agency head. The agency's employees are permitted to participate in the blood drive during their work hours without using sick and annual ~~leave~~.
2. An employee desiring to donate blood at a time, other than an agency arranged volunteer blood drive, must be excused from work by his agency during the employee's regular work hours for the purpose of making the donation without prejudice to the employee and no leave or makeup time may be required. Any employee desiring to donate blood as provided in § 8-11-175 of the South Carolina Code of Laws shall notify his agency of the scheduled donation and the amount of time needed for the donation as far in advance as may be practicable. The agency may deny the employee's request for time to donate if the absence of the employee would create an extraordinary burden on the agency. In considering the employee's request, the agency shall take into consideration such factors as the necessity and type

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of blood donation, and any other factor the agency considers appropriate. The agency may, as condition of approving the request, require the employee to provide documentation of the donation.

E. Bone Marrow Donor Leave

An employee who works an average of 20 hours or more a week and who seeks to undergo a medical procedure to donate bone marrow may be granted bone marrow donor leave with pay. The total amount of paid leave may not exceed 40 work hours unless a longer length of time is approved by the agency head. Such leave may require verification by a health care practitioner of the purpose and length of each request. If a medical determination finds that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee before that medical determination is not forfeited.

F. Court Leave

1. Jury Duty (With Pay)

- a. An employee, who is summoned as a member of a jury panel, shall be granted court leave with pay. Any jury fees and travel payment shall be retained by the employee. This court leave with pay shall not apply to agencies whose employees are exempt from jury duty by law.
- b. An employee, who is excused from jury duty and was not required to be at court the number of hours equal to the employee's workday, is required to return to the job according to arrangements between the employee and the agency designee. The employee must be on authorized leave for any time the employee is excused from jury duty and does not return to work.
- c. An employee who is summoned to jury duty will be required to work on any given day only the number of hours that equal the employee's work schedule, minus the hours required to be at court.

2. Subpoenaed As a Witness (With Pay)

An employee, who is subpoenaed as a witness and who will not receive any personal gain from the outcome of the litigation, shall be entitled to court leave with pay for those hours required for the subpoena and may retain any witness fee and travel expenses.

3. Exceptions

- a. An employee engaged in personal litigation is not eligible for court leave with pay, but may be granted annual leave or leave without pay with appropriate authorization.

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- b. When an employee is subpoenaed to represent an agency as a witness or defendant, his appearance is considered a part of the employee's job assignment. The employee shall be reimbursed for any meals, lodging, and travel expenses that may be incurred according to State Travel Guidelines as provided in the annual Appropriation Act and Budget and Control Board Regulations.
- c. When an employee attends, in an official capacity, a mediation or mediation-arbitration conference, his attendance is considered a part of the employee's job assignment.
- d. When an employee appears as a witness or in any other official capacity in a hearing before the State Employee Grievance Committee, his appearance is considered a part of the employee's job assignment.

G. Death in Immediate Family Leave

- 1. An employee, upon request, shall be granted up to three consecutive workdays of leave with pay on the death of any member of the employee's immediate family. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, legal guardians, brothers, spouse of brothers, sisters, spouse of sisters, children, spouse of children, grandchildren, great-grandchildren of either the employee or the spouse.
- 2. An employee requesting leave for a death in the immediate family shall submit a statement to the appropriate authority stating the name of the deceased and the relationship to the deceased.

H. Educational Leave

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours and the agency cannot feasibly adjust the work schedule of the employee, the employee may be allowed to take annual leave or may be granted leave without pay in order to attend classes.

I. Extended Disability Leave

Under the Americans with Disabilities Act (ADA), certain extended illnesses may be protected as disabilities and may require reasonable accommodation.

- 1. For any extended period of certified disability due to illness, injury, or maternity, an employee may request leave not to exceed (1) 180 workdays of leave with pay, or (2) 180 calendar days of combined leave with pay and leave without pay.

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2. The agency shall require, prior to approval of an extended disability, certification by the health care practitioner to include: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and (3) appropriate medical facts within the knowledge of the health care practitioner regarding the condition. Dates set forth in the health care practitioner's certificate may be amended. The agency may require additional documentation from the health care practitioner issuing the certificate or may secure additional medical opinions from other health care practitioners.
3. An agency may not deny an employee's request for the 180-day disability leave for bona fide illness or disability if the employee is in an FTE position.
4. Should the employee return within the approved 180-day period, the agency shall reinstate the employee to the same position or one of a comparable pay band for which the employee is qualified.
5. If the employee is unable to return within the 180-day period, the agency must separate the employee from State service.
6. In extenuating circumstances, two extensions are available:
 - a. The agency head may extend the 180-day period of leave to a total of 365 days provided the health care practitioner certifies the employee's return within this time period; and
 - b. The agency head may request from OHR an extension of the disability leave beyond the 365 days without a break in service provided the health care practitioner certifies the employee's return to work within the time frame of the requested extension.

J. Family and Medical Leave Guidelines

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations.

1. Eligibility and Reasons for FMLA Leave

- a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours, and is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site.
 - (1) In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept. Otherwise, an exempt employee is presumed to

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have met the 1,250 hours of service.

- (2) State government is considered a single employer for the purpose of determining FMLA leave.
- b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:
 - (1) For the birth of a son or daughter and to care for that child;
 - (2) For placement of a son or daughter for adoption or foster care with the employee;
 - (3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition; and
 - (4) For a serious health condition that makes the employee unable to perform the functions of the employee's job.

Note: Eligibility for Reasons A. and B. expires 12 months after the date of the birth or placement.

2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require that an employee's request for FMLA leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition, be supported by a certification issued by the health care practitioner.

3. Use of FMLA Leave

The agency is responsible for declaring leave as FMLA leave based on information provided by the employee.

- a. When the agency designates leave as FMLA leave, it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA.
- b. Use of FMLA leave shall be calculated by either the actual time or in quarter hour increments.
- c. The agency should declare any leave taken that qualifies as FMLA leave. The

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FMLA leave should run concurrently with any other leave, and the leave should be charged against both leave categories' allowances.

4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

- a. An eligible employee will be required to substitute his accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or
- b. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.

5. FMLA Leave Record

A leave record shall be maintained by the employing agency for each employee subject to the provisions of the FMLA. Such record shall:

- a. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
- b. Indicate the number of FMLA leave hours used in the current calendar year.
- c. Indicate the number of hours in the employee's established workweek.

6. Transfer of FMLA Leave

For an eligible employee who transfers from one agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving agency.

K. Hazardous Weather and Emergency Leave

1. Upon issuing a Declaration of Emergency, the Governor has the authority to excuse all employees of State government from reporting to work during extreme weather or other emergency conditions. "Emergency conditions" means circumstances that would expose employees to harmful or unsafe conditions as determined by the Governor's Office. Unless such a Declaration of Emergency has been issued, all State government employees are expected to report to work.

Exception - Nothing contained in this Section precludes the necessary immediate evacuation of a facility by an individual in an appropriate supervisory capacity in the interest of personal safety.

2. The Declaration may be applicable to all employees in the entire State, or only to

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those employees who live or work in one geographical region of the State, or a combination of geographical regions.

3. During a Declaration of Emergency, all essential and direct care services will be maintained. Each agency shall identify essential employees by position, classification, or internal title, and post a list thereof. Generally, no change of the essential employee roster should be authorized after the Governor's Declaration of an Emergency. Nonessential employees will not be expected to report to work.

4. Notification of Declaration of Emergency

- a. Between the Hours of 8:00 a.m. and 5:00 p.m.

- (1) The Declaration of Emergency shall be communicated from the Governor's Office to the State Human Resources Director.

- (2) The State Human Resources Director will communicate the Declaration of Emergency to each agency in accordance with the list of agency representatives to be contacted in the case of an emergency declaration. Each agency will be responsible for submitting to the Office of Human Resources (OHR), in an appropriate form developed by the Office, the designated agency official (and two alternates) to contact in order to ensure the expeditious dissemination of the Declaration of Emergency to all affected agencies. Each agency is responsible for informing the State Human Resources Director when the listing of agency representatives to be notified by OHR is to be revised.

- (3) The Governor's Office will issue a statement to the news media concerning the release of employees due to the emergency.

- b. Between the Hours of 5:00 p.m. and 8:00 a.m.

All Declarations of Emergency will be transmitted by the Governor's Office to the news media. Employees will assume an individual responsibility to respond in an appropriate manner to closings as they may be announced.

5. Compensation During Declaration of Emergency

Notwithstanding any other provisions of law, when the Governor declares a state of emergency for the State or any portion of the State, he can provide State employees with leave with pay for absences from work due to the state of emergency for hazardous weather of up to five days for each declaration of a state of emergency. In the event that the Governor does not provide State employees with leave with pay, an employee who does not report to work or who reports late to work shall use annual leave or compensatory time to make up hours scheduled but not worked, take leave without pay, or be allowed to make up the hours at a time to be scheduled by the agency. The employee must be given the option of making up the hours if the

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employee so desires.

L. Military Leave

1. Short Term Military Training

All officers and employees of this State or a political subdivision of this State, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating, for one or more periods not exceeding an aggregate of 15 regularly scheduled average workdays in any one year during which they may be engaged in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. In the event any such person is called upon to serve during an emergency, he is entitled to such leave of absence for a period not exceeding 30 additional days. Any one year means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders.

2. Long Term Military Leave of Absence

Every employee of the State or any political subdivision thereof who, on or after June 25, 1950, has been, or shall be commissioned, enlisted, or selected for service in the Armed Forces of the United States (excluding short term training) shall, so long as the requirements and regulations of the Armed Forces shall prevent his return to his civil employment for a period of 90 days thereafter, but in no event for a period longer than five years from the date of entry into the Armed Forces of the United States, be entitled to leave of absence from his duties as an employee of the State or any political subdivision thereof, without loss of seniority or efficiency or register ratings. The word "employee" as used herein shall not be construed to mean an officer or official elected or appointed to a term pursuant to a statute or the Constitution of this [State].

M. Sabbatical Leave

When provided in statute, an institution of higher learning may establish a policy for a leave of absence for a sabbatical for academic personnel.

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N. State Employee Grievances and Appeals Attendance

Refer to Section 19-712.01 F. 3. c. and d.

O. Voting Leave

An employee who lives at such distance from the assigned work location as to preclude voting outside of working hours may be authorized a maximum of two hours of leave with pay for this purpose. To work at the polls during elections, an employee must be on authorized leave.

P. Workers' Compensation Leave

1. If there is an accidental injury arising out of and in the course of employment with the State, which is covered under Workers' Compensation, an employee who is not eligible for or who has exhausted his paid administrative leave, shall make an election to use either earned leave time (sick or annual or both) or Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws.
2. The employee shall make an election under one of the following options:
 - a. To use sick leave, annual leave, or both. When earned leave is exhausted before the employee can return to work, the employee shall be entitled to Workers' Compensation benefits at the time leave is exhausted;
 - b. To use Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws, as amended; or
 - c. To use sick leave, annual leave, or both on a prorated basis in conjunction with Workers' Compensation benefits according to the formula approved by the Budget and Control Board.
3. Before the election is made, the effect of each available option on the employee's future leave earnings must be explained to the employee by the employing agency. The election must be in writing and signed by the employee and the person who explains the options. The election of the employee is irrevocable as to each individual incident.
4. Regardless of which option an employee elects, he would continue to be eligible for payment of medical costs provided by the State Accident Fund.

Q. Organ Donor Leave

All officers and employees of this State who wish to be an organ donor and who accrue annual or sick leave as part of their employment are entitled to leaves of absence from their respective duties without loss of pay, time, leave, or efficiency rating for one or

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more periods not exceeding an aggregate of 30 regularly scheduled workdays in any one fiscal year during which they may engage in the donation of their organs. Saturdays, Sundays, and State holidays may not be included in the 30-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. The officer or employee must show documentation from the attending physician of the proposed organ donation before leave is approved that confirms that the employee is the donor.

19-712.02 OTHER LEAVE RECORDS

- A. The agency shall maintain all leave records for each employee eligible for such leave. Such records must include the number of leave hours used during the current calendar year.
- A. Leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave forms signed by the employee and the agency designee.